Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Correctional Services of Canada and Union of Canadian Correctional Officers – CSN, 2013 OHSTC 11

Date: 2013-02-20
Case No.: 2010-18
Rendered at: Ottawa

Between:

Correctional Services of Canada, Appellant

and

Union of Canadian Correctional Officers – CSN, Respondent

Matter:	Appeal under subsection 146(1) of the *Canada Labour Code* of a direction issued by a health and safety officer
Decision:	The direction is rescinded and a direction is issued
Decision rendered by:	Mr. Richard Lafrance, Appeals Officer
Language of decision:	English
For the appellant:	Ms. Caroline Engmann, Counsel, Treasury Board of Canada Secretariat
For the respondent:	Ms. Jessie Caron, Counsel, Confédération des syndicats nationaux

REASONS

[1] This is an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) of a direction issued to Correctional Services Canada (CSC) by Health and Safety Officer (HSO) Greg Garron on April 10, 2010.

Background

[2] On April 4, 2010, health and safety officers were called in to investigate a continued work refusal at the Millhaven Institution.

[3] Prior to this, on April 1, 2010, some 68 inmates refused to leave the recreational yard following an incident in the gymnasium. Correctional Officers were positioned outside the fence around the perimeter of the yard. Others were posted in towers, in patrol vehicles and some were on the roof of the building beside the yard.

[4] Inmate behavior was assaultive and while no Correctional Officers were injured, some were hit with urine. Projectiles, including rocks, human waste and used gas cartridge were also thrown at the officers.

[5] The inmates remained out in the yard for approximately 24 hours before agreeing to return to their cells.

[6] On April 3, 2010, approximately 63 inmates again refused to leave the yard until a decision by the Warden to confine three inmates to their cell for not following routine was reversed.

[7] The refusing employees stated that the correctional manager at the time said that he believed that the gas ammunition currently used could not control the inmates in the yard during an emergency.

[8] On this instance the Warden decided that based on the events that occurred two nights before, he was not willing to allow the inmates to stay outside because the officers cannot control the inmates in an emergency. He rescinded the decision to restrict the inmates to their cells.

[9] The inmates later returned to their cells without incident and were given normal range activities.

[10] The statement of refusal to work included in the HSO's report stated the following:

> Under emergency situations, Officers positioned outside the yard perimeter are exposed to projectiles being thrown at them including biohazard material such as human waste. Correctional Officers including the IERT (Institutional Emergency Response Team) are not trained and or

> equipped to extract an inmate in need of emergency medical assistance from the yard.

[11] HSO Garron decided upon completing his investigation that a danger existed and issued two directions to the employer.

[12] One direction was issued under subsection 145(2) of the Code, as the HSO believed that the performance of an activity constituted a danger to the employees while at work. The employer did not appeal this direction.

[13] The other direction, which was appealed stated:

> IN THE MATTER OF THE *CANADA LABOUR CODE*
> PART II – OCCUPATIONAL HEALTH AND SAFETY
>
> DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)
>
> On April 5, 2010 the undersigned health and safety officer conducted **an investigation** in the work place operated by Correctional Service Canada being an employer subject to the *Canada Labour Code*, Part II at Millhaven Institution, the said work place being sometimes known as Correctional Service Canada.
>
> The said health and safety officer is of the opinion that the following provisions of the *Canada Labour Code*, Part II, are being contravened:
>
> 1. Canada Labour Code Part II, Paragraph 125.(1)(p)
>
> 2. Canada Occupational Health and Safety Regulations Part 17 Paragraph 17.5(1)(a).
>
> Correctional Officers have not received the training and necessary resources to enter the yard under emergency situations to clear the yard and extract an inmate in need of medical assistance.
>
> Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than April 30, 2010.

[14] To treat this appeal, a hearing was held in Kingston, Ontario, from February 28 to March 1, 2011.

Issue

[15] The issue to be resolved is whether HSO Garron erred in finding that the employer, Correctional Services of Canada, contravened paragraph 125(1)(p) of the Code and paragraph 17.5(1)(a) of the Regulations.

Appellant's submissions

[16] The appellant called two witnesses, Mr. Wayne Buller, Assistant Warden, Management Services and Mr. Thompson, Deputy Warden.

[17] Mr. Buller explained that during the inmate's recreational time, a fight broke out in the gymnasium. Staff responded with the use of chemical agents, which led to a mass movement of more than 50 inmates into the yard.

[18] Inmates were behaving aggressively in the yard causing Correctional Officers to be deployed along the yard perimeter to monitor the situation. At no time was there direct contact between the inmates and the officers.

[19] There was an inmate injury however, after being hurt, the inmate managed to get himself to a certain area where there was an open barrier and was safely extracted from the yard.

[20] Mr. Buller explained the existing framework at the institution for managing emergencies with specific references to the Commissioner's Directive number 600 (CD 600) and the institution's Contingency Plan.

[21] He further explained that CD 600 is available on the CSC intranet site to all employees including Correctional Officers.

[22] Mr. Buller went on to say that CD 600 provides for the establishment of a specialized security response capability called the "Institutional Emergency response Team" (IERT) to deal with emergencies.

[23] He further stated that Millhaven contingency plan defines what happened on April 3, 2010 as an inmate disturbance or demonstration. The Contingency plan sets out as follow, the standard Operating Procedures for handling such disturbances or demonstrations:

1. entails the control and containment of participants;

2. entails a formal response, which could include the regaining of control by force. If force must be used to resolve the disturbance, then the IERT must be activated and deployed.

[24] Mr. Buller confirmed that it was not uncommon at Millhaven Institution for inmates to refuse to return to their cells from the yard as a form of protest. These types of protest are often resolved through negotiations and sometimes the use of chemical agents.

[25] Mr. Thompson testified that after the HSO's investigation, he issued a memorandum to all staff indicating that the only staffs who are permitted to respond to an

emergency in the yard, outside the protection of a control post or mobile equipment, are deployed IERT members with the authorization of the Warden.

[26] Mr. Thompson explained that IERT members receive the National Operational Basic IERT training and a 10 day refresher training every year.

[27] Mr. Thompson also identified the equipment that was available to IERT. He further explained that IERT at Millhaven have the basic training to enter end clear the yard. They receive training in crowd psychology, formations, batons and shields all of which would be deployed in yard clearance and extractions. He confirmed as well that IERT members have biohazard suits. He testified that there are other IERT teams elsewhere that have entered institutional yards with a mission to extract an inmate and have done so successfully.

[28] Mr. Thompson noted that the Warden has been asking the IERT to come up with a partial "Situation, Mission, Execution, Administration and Communication (SMEAC) Action Plan" with respect to the yard, however, the Team has not complied with his request.

[29] Caroline Engmann, Counsel for Correctional Services, argued that the direction issued by HSO Garron presupposes that staff (Correctional Officers) at Millhaven is deployed into the recreational yard. She asserts that the evidence is overwhelming that this does not occur. She noted as well that testimonies demonstrate that when staffs have been deployed outside, there was always a perimeter barrier between staff and inmates.

[30] In fact, Mr. Thompson's memo to staff indicates that no one, other than IERT members, is permitted to respond outside the protection of a control post or mobile equipment.

[31] Ms. Engmann argued that when the IERT is activated, they have the full panoply of protective clothing, equipment and tools at their disposal to safely complete and accomplish their mission.

[32] She argued that the concerns of the IERT members for not attempting to develop a (SMEAC) Action Plan were about the excessive numbers of inmates in the yard and the yard infrastructure. She asserts that the issue of yard infrastructure is a red herring. The concern is really about the numbers of the IERT members to be deployed when yard occupancy is up to capacity.

[33] To add to this point she indicated that the evidence clearly established that the Millhaven Institute IERT has the ability to call in assistance from other IERTs in the region if they need more members in planning their SMEAC action plan. In fact the evidence shows that it was done in the past.

[34] On the issue of emergency procedures, Ms. Engmann argued that the evidence shows that the Institution has a contingency plan in place to deal with emergencies. In

addition she indicated that the Occupational Health and Safety (OHS) Committee was consulted for some aspects of the contingency plan.

[35] In terms of training, Ms. Engmann argued that the evidence confirms that all Correctional Officers have received basic training. She added that Correctional Officers who are routinely called upon to deal with emergency situations (IERT team) receive specialized training. Ms. Engmann asserts that given the very nature of the work of the IERT, it is not possible to have a "perfect" training.

[36] Ms. Engmann stresses that it is important for the Tribunal not to defer to the wishes of a few Correctional Officers but should base its findings on clear and cogent evidence. She pointed out that the evidence shows that the IERT teams augments formation with weapons when they do range clearances and cell extractions, albeit on a smaller scale.

[37] She argued that Deputy Warden Thompson clearly testified that in his opinion, the team is fully trained and well equipped to enter and clear the yard on the basis of a well-formulated SMEAC plan of action.

[38] Ms. Engmann urges the Tribunal to review the content of some parts of the training manual for IERT, such as performance objectives for Arrest and Control, crowd psychology and riot formations, etc.

[39] She drew particular attention to the following text in the training manual[1]:

> [T]raditionally the wedge formation has been used to open a passage through a crowd to permit persons or vehicles to pass through; or to enter a mob and extract agitators, leaders and/or injured persons… [T]he straight-line formation […] can be used by the IERT to move inmates back or to hold the line. The double line formation and the double backed line formation are variations of the straight-line formation that are of great use to the IERT. The double line formation using the front rank as shield officers is very effective for advancing against a rioting group who are throwing projectiles etc.

[40] Ms. Engmann added that overall, what these pages show is that the IERT members have received the training and acquired the necessary skills to be deployed in emergency situations.

[41] Regarding the press releases provided by the respondent, she claimed that the only thing those do is establish that inmates at Millhaven Institution use the occupancy of the yard as a pressure tactic. She indicated as well that they also show that the existing control and containment measures have, to date, been effective in resolving the issues.

[1] National Operational IERT Participant's Manual and Resources, page 6-6.

[42] She proclaims that the employer's hope and expectation is that the IERT will eventually develop and simulate a SMEAC action plan for yard extraction as they have done for the gymnasium.

[43] In conclusion, Ms. Engmann argued that there is no evidence to support a finding that the employer was or is in violation of paragraph 125(1)(p) of the Code and paragraph 17.5(1)(a) of the Regulations. As a result, the appellant requests that the direction issued by HSO Garron be rescinded, and that his specific finding that Correctional Officers do not have the training and tools to enter and clear the yard in order to extract an inmate in need of medical assistance be quashed.

Respondent's Submissions

[44] The respondent called four witnesses to testify:

- Mr. Howard Page, Correctional Officer;
- Mr. Robert Finucan, Correctional Officer with 22 years of experience as a member of the IERT team;
- Bernard Jones, Correctional Officer with 4 years of experience as a member of the IERT team as a camera operator;
- Guy Wagar, Correctional Officer with 22 years of experience as a member of the IERT team

[45] Mr. Page registered the work refusal on behalf of the Correctional Officers who were working on April 1, and April 3, 2010. He is not a member of the IERT but as a Correctional Officer he has received training in arrest and control techniques.

[46] He confirmed that Correctional Officers never walk in or patrol the yard. He explained that there are two main secure posts where inmates can be monitored while they are in the yard.

[47] Based on his observation from the Main Communications and Control Post (MCCP), Mr. Page's opinion is that the gas munitions are ineffective against the inmates. He admitted however that the use of gas does not guarantee inmate compliance.

[48] Mr. Page further explained that when inmates on the range remain non-compliant with orders to go back to their cells, Correctional Services would normally mobilize the IERT team to clear the range and put the inmates back into their cells. He commented that the ERT has done this successfully in the past.

[49] Mr. Finucan confirmed that he has received the basic IERT training as well as the yearly ten-day refresher training. He confirmed that their training usually occurs at the Royal Military College in the gymnasium or recreational range.

[50] He confirmed that there is no real training on the “augment” formation training with weapons. He did admit however that the IERT team has, on occasion, entered the range with firearms.

[51] Mr. Finucan confirmed that the largest area for which the IERT has done a simulation was the gymnasium and that such simulation could be done as part of the annual ten-day refresher training session.

[52] Mr. Jones testified as being a camera operator of the IERT and indicated that every single function of the IERT team is recorded by video camera. As a camera operator he gets five days of training instead of the normal ten-day session the other IERT team receives. He further confirmed that the line staff does not enter the yard.

[53] Mr. Jones stated that inmates routinely test Correctional Officers to the limit. He also indicated that the creation of separate yards for the Maximum Secure Unit (MSU) and Millhaven Assessment Unit (MAU) has addressed some of the concerns regarding inmate control. He also pointed out that modifications made to the recreational barriers for the purpose of allowing staff to better control inmate movements have also alleviated concerns with inmate controls.

[54] Mr. Wagar indicated that he has been an IERT team leader for the last 17 years. He described the IERT role as developing plans for cell extraction, range clearance and range walks. As a leader he receives an additional five days of training a year.

[55] Mr. Wagar acknowledges that management approached the IERT team about coming up with a way to address the SMEAC action plan, but noted that the team did not feel qualified to do so because they did not know where to begin. He stated that the yard has such an odd shape that they want management to do something about the yard infrastructure before they could venture to prepare a SMEAC. He said that he would like to have an individual with some experience come and provide the team with assistance.

[56] Mr. Wagar stated that the IERT team has done a gymnasium extraction and that it went reasonably well, except for issues they had with the communication tools. He confirmed, however that the IERT team had received new one-way radios for the team leader to contact his team while in deployment.

[57] Ms. Caron, counsel for the respondents, argued that the CSC Contingency Plan does not even fulfill its stated purpose of providing sufficient training and resources to ensure responsible and competent response to emergency situation.

[58] She further argued that a careful review of the contingency plan reveals its generic character, as there is nothing specific in the plan with regard to training or equipment.

[59] Ms. Caron stated that it is apparent throughout the two chapters of the contingency plan addressing major disturbances and demonstrations by inmates, that the

plan is designed to guide the crisis management team and not the IERT team, let alone the line staff.

[60] She affirms that this contingency plan merely sets the stage for what would be expected of the crisis management team, namely, to call in the IERT team. She submits that the Contingency Plan does not meet the requirements of subsection 17.5(2) of the Regulations, as it does not provide a "full description" of the procedures to be followed.

[61] Ms. Caron further argues that contrary to subsection 17.5(1) of the Regulations, the relevant parts of the contingency plan were not presented nor reviewed by the local health and safety committee. Further, she submits that this last reason alone ought to be sufficient for this Tribunal to conclude that the employer does not have the required "emergency procedures" in place.

[62] On the issue of the plan to resort to the IERT, Ms. Caron argues that the memo sent by Mr. Thompson regarding only allowing IERT team members to respond in the yard is not in itself an "emergency procedure" as contemplated by the Code. She further submits that although this is a very valuable and essential tool at the disposal of the employer to address emergency situations, this assertion by the employer does not meet the requirements of the Code.

[63] She submits that the employer relies on theoretical evidence to make the case that Millhaven IERT should and therefore can conduct a yard extraction. However, she affirms that the evidence shows that IERT leaders do not know where to begin in the task of developing an action plan to conduct an extraction from the yard.

[64] Ms. Caron claims that formal training delivered to IERT members does not cover formations of the magnitude of what would be required to conduct a yard extraction at Millhaven Institution. She argues that contrary to the employer's assertions, the testimony of Mr. Finucan and Mr. Wagar show that the IERT's extensive training and experience in range clearings and cell extractions cannot easily be transposed to the yard. She further submits that their testimony indicates that the various formations described in the IERT training manual would not easily apply to the yard of that size and its odd shape.

[65] She maintains that the new one-way communication devices provided to IERT at Millhaven create a problem as indicated in the testimony of Mr. Wagar. As he stated in testimony, even during exercises conducted by the IERT in the gymnasium, communication was not easy. She surmises that in an open-air environment about twelve times the size of the gymnasium, the communication glitch would become a significant deficiency.

[66] On the issue of chemical agents (gas munitions) Ms. Caron contends that testimonies show that they are not very effective outdoors. The chemical agent currently used merely move the crowd of inmates from one place to another. Firearms would likely have to be used by IERT team in performing yard extractions, but nothing in their training teaches them how to "augment" their formations with firearms.

[67] She maintains that according to the testimony of the IERT members, they do not know how many IERT members it would take to handle a crowd of inmates in the yard, which could be anywhere between 50 to 300 inmates. Even with the addition of IERT members from the other three other institutions close by, they still do not know if it would be sufficient, as they have never practiced a yard extraction (neither in real life nor in simulation) with other IERTs.

[68] Ms. Caron rationalized that inmates regularly refuse to leave the yard. They tend to refuse for various reasons: they use the yard as a tool to negotiate what they want, and also commit assaults in the yard and benefit from the cover of the crowd etc. The yard is in itself a valuable asset for the inmates, so is its occupation. Ms. Caron pointed out that as the chance of yard occupation gets higher, so does the chance of inmate injuries. Naturally, the chance of having to enter the yard to rescue an injured individual from a large crowd or assaultive inmates rises as well.

[69] She avowed that in the employer's business, preservation of life is paramount. She affirmed as well that if all else fails to effectively contain and control a large crowd of assaultive inmates who refuse to leave the yard, staff needs to be deployed to enter the yard and save an inmate's life.

[70] Based on Mr. Thompson's memo, it is clear that CSC recognizes that this is not a hypothetical situation but that such circumstances may occur. It also proves that it is important for the employer to show that through the deployment of IERT they can and will enter the yard.

[71] Ms. Caron also acknowledged that the evidence shows that at Millhaven, staff do not patrol or "walk the yard" as a matter of routine.

[72] Ms. Caron submits that any emergency plan has to be designed and that this cannot be accomplished without the active cooperation and involvement of the employer.

[73] Ms. Caron concluded that there is ample evidence to demonstrate that in the matter of entering, clearing the yard and extracting an injured inmate from the yard, CSC does not have a genuine emergency procedure in place within the meaning of paragraph 125(1)(p) of the Code and paragraph 17.5(1)(a) of the Regulations. In sum, she submitted that the evidence does not compel the Tribunal to render a different decision and that the HSO's direction of April 9, 2010 ought to be confirmed.

Appellant's reply

[74] Ms. Engmann reiterated that HSO Garron's direction is premised on a hypothetical situation. She argued that as noted by the Appeals Officer in *Page v. Correctional Services Canada*[2] hypothetical situations do not meet the definition of

[2] *Page v. Correctional Services of Canada*, 2001 OHSTC Decision No. 01-015, at para. 15 and 23.

"danger" in the Code. She points out that on the two days in question, Mr. Page was working at the MCCP, which was far removed from the exercise yard and thus could not have perceived a "danger" to himself.

[75] Regarding the Contingency Plan, Ms. Engmann argued that this plan forms the "spine" or the basis for which the institution deals with emergency situations, a reference point of departure to manage crisis situations.

[76] She explains that in writing out a "full description of the procedure to be followed", as required under subsection 17.5(2) of the Code, it would almost be impossible to itemize every procedure to follow. She noted that this is especially true when considering that a SMEAC is produced for every planned use of force, from a cell extraction to a large incident such as in the gymnasium or the yard.

[77] She added that the requirements of the subsection must be interpreted contextually in light of the employers operations. She submits that based on the evidence provided, the employer does have reasonable measures and procedures to protect the health and safety of its employees with specific reference to the yard at the Millhaven Institution.

[78] In response to the respondent's arguments that the parts of the contingency plan dealing with disturbances and demonstration are generic and do not specify the minutiae of "how control would be regained by force", Ms. Engmann argued that it would be impossible to create a manual or binder with reaction/response to all potential problems that might occur in an exercise yard where there are inmates. Such an approach is implausible and clearly not within the contemplation of the legislation.

[79] Furthermore, she added that such an approach would stifle the flexibility that currently exists within the IERT to adapt to the changing nature of the emergencies.

[80] On the issue that the Contingency Plan was not presented to the Local OHS Committee, she responded that the local OHS Committee is not an approval body for the Contingency Plan. The statutory requirement is that the local OHS committee or representative be consulted in respect of emergency procedures to be implemented. She noted that according to Mr. Buller's testimony, the committee in question was consulted on certain aspect of the Contingency Plan.

[81] She submits that the deployment of the IERT forms an integral part of the emergency procedures contemplated in paragraph 125(p) of the Code and paragraph 17.5(1)(a) of the Regulations. As noted in their manual, once the IERT is deployed, the first step is to prepare a step by step plan which takes in account considerations such as: Why now versus later? Does the plan minimize loss of life? Is the plan ethically, morally and legally acceptable?

[82] Ms. Engmann emphasized that according to testimonies, the IERT training is standardized across the country. This standardization ensures that multiple teams (at

different institutions) can work together seamlessly given that the team members would know what everyone's roles and responsibilities are.

[83] Regarding the clearance of yards by other IERTs, she further responded that other maximum security institutions have entered and cleared yard areas using the same IERT training as the one used at Millhaven without staff being harmed or injured.

[84] On the difficulty of devising and putting into effect a proper SMEAC to deal with an extraction from the yard at Millhaven, Ms. Engmann suggested that Mr. Wagar may not be completely objective as it is clear that this has been a personal issue for him. She noted that no other IERT Leader was brought in to support this position.

[85] Ms. Engmann also called attention to the fact that although Millhaven Institution IERT refuses to practice yard clearing, all the material to do so is taught during their initial 10 day basic package and they refresh these skills during their 10 day of training per year.

[86] She pointed out that in addition to the training, the employer provides each IERT member with a personal kit of tools and equipment. Ms. Engmann noted that although the IERT claims that they are not trained to respond with shotguns in the formations, they testified that they use batons all the time in range clearings, using the same formations that could be used to clear the yard. It was submitted that they can replace batons with shotguns, using the same formations.

Supplementary Submissions

[87] As I progressed in my analysis of the situation, I debated the matters to be resolved in this case and whether the HSO had erred in using as a reference Part XVII of the OHS Regulations entitled "Safe Occupancy of the Workplace".

[88] Consequently, I contacted both parties and requested additional submissions on the following:

1) Do the provisions cited by HSO Garron, that is, paragraph 125(1)(p) of the Code and paragraph 17.5(1)(a) of the Regulations, really apply to the factual circumstances investigated by the HSO?

   In other words, do these sections of the Code and Regulations, which deal with <u>safe entry to, exit from and safe occupancy of the workplace</u>, apply to a situation dealing with a work procedure where COs have to enter and clear the exercise yard and perhaps extract an injured inmate? Or, are those sections meant to apply to different factual circumstances?

2) Are paragraph(s) 125(1)(z.03) and/or (z.04) of the Code and Part XIX of the Regulations (Hazard Prevention in the Work Place), applicable to the

circumstances surrounding this case? If so, do the facts established at the hearing raise a contravention of these provisions?

3) Are paragraph 125(1)(z.16) of the Code and Part XX of the Regulations (Violence Prevention in the Work Place) applicable to the circumstances surrounding this case? If so, do the facts established at the hearing raise a contravention of these provisions?

[89] Further to my request, the parties provided the Tribunal with an agreed statement of facts and individual and reply submissions to the issues that I raised.

Agreed statement of Facts

[90] In the agreed statement of facts the parties agreed that Correctional Services Officers (CXs) are subject to a generic work description.

[91] It is also noted that the primary duties for CXs are defined in the National General Post Orders established by Correctional Services in 2009. According to these orders, the Occupational Health and Safety Committee is consulted whenever a new post order is implemented.

[92] Additionally, the parties agreed that there are only five posts that are relevant to the yard when it is occupied by inmates: 1) Recreation Cage; 2) Outpost; 3) Secure Control Post; 4) Main Control and Communications; and 5) Mobile Patrol (Days, Evenings).

[93] There are no post orders dictating the interventions that are led and accomplished by the Institution's Emergency Response Team (IERT).

[94] Management and Unions at CSC consult on a regular basis on occupational health and safety matters at national, regional and local levels. In 2011, there were eleven regular meetings and two emergency meetings at Millhaven of the joint occupational health and safety committees.

[95] At the national level, Correctional Services monitors its programs related to workplace health and safety through various means including: a) management control framework; b) review of the Hazardous Occurrence Investigation Reports; c) accident investigation reviews; and d) local OHS Committee minutes review.

[96] Finally the parties agreed that the Commissioner's Directive outlines the broad policy statement with respect to safe and healthy work environments, roles and responsibilities and underlying principles.

[97] On Part XVII of the Regulations, entitled "Hazard Prevention in the Workplace", the parties agreed that Correctional Services had developed a National Hazard Prevention Program (HPP) and implemented it in 2008. Furthermore, a job hazard analysis (JHA)

was done on a global scale and the Atlantic Region was selected as the pilot for all institutions.

[98] It was agreed that the two main tasks relevant to this appeal, namely, monitoring and intervention, were analyzed for job hazards during this review. However, I note that those two analyses have yet to be adapted to the reality of Millhaven Institution.

[99] I noted as well that patrols are not conducted inside the gym or yard, as direct observations are constant from the recreation gallery and "B" outpost when inmates are in the gym or yard.

[100] Regarding Correctional Officers' training, all officers are required to successfully complete the Correctional Training program as described in the provided documents. Correctional Officers also undergo annual refresher training for using firearms, inflammatory spray etc. In addition, CXs are required to take the annual one-day Personal Safety Refresher Course that is necessary for continuous development and security skills retention for CXs and primary workers.

[101] Finally, on Violence Prevention in the Workplace (Part XX of the Regulations) the parties noted that Correctional Services was in the process of developing Guidelines on the said Program. Those guidelines are to be incorporated in other guidelines that address their OHS Program. The parties also agreed that there were multiple policies, which deal directly with offenders and their behavior as a means of controlling violence within the inmate population.

Appellant's Supplementary Submissions

[102] Ms. Caroline Engmann submitted that the provisions cited by HSO Garron are not really applicable to the factual situation of this case. She states that the Regulations prescribed two main components of the employer's duties: (a) fire safety; and (b) emergency evacuation plan. She argues that as Correctional Officers are not deployed into the recreational yard when inmates occupy the yard, it appears that in the ordinary and routine course of their employment, the safe occupancy provision would not be applicable.

[103] In any events, the employer submits that it is in compliance with the requirements as evidence indicated the Contingency Plan provides for emergency locations and vital points and also provides instruction on how to deal with major incidents and disturbances such as fire and inmates disturbances. The circumstances of the present case deal with inmate demonstrations and have nothing to do with fire emergencies. In any event, the employer submits that in accordance with the Commissioners Directives, Millhaven has a fire and evacuation plan as well as an emergency evacuation plan as contemplated under Part XVII of the Regulations. She further argued that the evidence presented during the hearing with respect to the yard scenario indicates that Millhaven deploys the trained and well-equipped IERT to conduct extraction and evacuation of the yard.

[104] On the second question, the employer's position is that the application of the Hazard Prevention Program in the work place could potentially apply to the factual circumstances investigated by the HSO. Having the IERT enter the yard that is occupied by uncooperative, unpredictable and non-compliant inmates who resort to violence could potentially be hazardous to Correctional Officers if officer lacks the necessary tools, equipment and training required to control and contain the situation.

[105] Ms. Engmann submits that the employer was in compliance with the Code as evidence indicated that the hazards associated with the relevant tasks and activities have already been identified, assessed and controlled.

[106] She submits that CSC has developed a Hazard Prevention Program, which was implemented in 2008. The plan was developed in consultation with the National Health and Safety Policy Committee. Documentation provided with the Agreed Statement of Facts in support of this sets out the key activities (monitoring inmate movements and interventions) of Correctional Officers, and outlines the working conditions and specifically identifies hazards and risks to health. She indicated that while the hazard identification and assessment have yet to be adapted to the reality of Millhaven, the main hazards remain the same.

[107] The control measures and objects identified in the document as appropriate for addressing the hazards are: armed post, radio, handcuffs, being alert and cautious, dynamic security, training in self-defense and arrest and control, and personal protective equipment.

[108] Ms. Engmann maintains that the evidence before the Tribunal is that only the IERT is used for such activities and that they are specifically trained for these types of operations which are one of the control measures, along with others such as: handcuff, OC spray, flashlight, chemical agents, protective gloves and vests, shields, batons. In addition, all IERT Officers receive annual training in personal safety.

[109] Regarding the third question which deals with Violence Prevention in the work place, Ms. Engmann submitted that the employer's position is that these provisions are not applicable to the factual circumstances of Correctional Officers work environment, as they are subject to daily exposure to inmates who may resort to violence. This is therefore submitted to be a normal condition of work for Correctional Officers.

[110] She further submits that even if the provisions were applicable, there are sufficient controls in place to address inmates' behavior as outlined in the agreed statement of facts. She did however note that with respect to compliance with Part XX of the Code, entitled "Violence Prevention in the work place", CSC is in the process of developing guidelines on this regulation to be incorporated in other CSC guidelines.

Respondent's Supplementary submissions

[111] In response to the questions I posed to the parties, Ms. Caron replied for the respondent that Part XVII of the Regulations applies to "emergency procedures". She stated that Parliament might not have had the correctional system in mind when enacting its occupational health and safety regulations. Nonetheless, while it may be that this provision was intended to force employers to prepare contingency plans in the case of a terrorist attack, a bomb threat or hostage taking in an office tower, she sees no reason why this could not apply to the case at hand.

[112] She further submits that the facts of the case are such that we are presented with persons (inmates) committing or threatening to commit an act likely to be hazardous (occupying the yard, protesting, rioting, assaulting, setting structures on fire), and employees (Correctional Officers). Consequently, at first glance it appears obvious that the provisions originally outlined by the HSO should apply.

[113] She submits that jurisprudence indicates that the requirements of paragraph 17.5(1)(a) do not apply to day-to-day operational procedures, but only to proper emergency situations. She concludes that in the case at hand, it is clear that we are not concerned with a matter of day-to-day operations. She submits that as the situation of inmates causing a disturbance in the yard is covered in the employer's Contingency Plan, this suggests that it is not considered a routine occurrence.

[114] On the second question, Ms. Caron submits that although she agrees that this particular situation could be addresses in part through the Hazard Prevention Program, she believes that a proper solution should not be found in these provisions alone.

[115] She further submits that Correctional Services' failure to develop and implement a Hazard Prevention Program (HPP) specific to Millhaven Institution is a contravention of paragraph 125(1)(z.04) of the Code, in that the HPP is not applicable to the nature of the hazards found at this particular site. Adapting the HPP locally is not only required by law, but it is an essential component of the national HPP, which has yet to be completed.

[116] Ms. Caron argues that the need for Millhaven Institution to develop its own model is particularly relevant and important due to the fact that on the matter of yard walks alone, Atlantic Institution (which was used as the pilot for maximum-security institution) has nothing in common with Millhaven Institution. The evidence demonstrates amply that COs do not walk the yard at Millhaven Institution. It is because each site is so different from one another that CSC's national HPP outlines the necessity to be adapted at each site, short of which the program itself is more or less useless, and the requirements of the Code and Regulations cannot truly be met.

[117] She contends that contrary to the employers' assertion, the HPP does not sufficiently identify, assess or control all the hazards associated with the work activities or tasks identified in the direction that is the subject of this appeal.

[118] With respect to the third question, Ms. Caron submits that they do not believe that the provisions cited in the question should apply to a situation such as the one at hand involving extreme physical violence coming from inmates. She asserts that it appears that such a program is designed to prevent psychological harassment in the work place, such as bullying, teasing, and abusive and other aggressive behavior. She points out that in a correctional environment, dealing with inmate violence is part and parcel of the job, while in most work places, violence may arise in reaction to risk factors such as an excessive work load, unclear managerial directions and unresolved personal conflicts.

[119] For these reasons, the respondent fails to see how a program implemented under Part XX of the Regulations would bring a resolution to the problem at issue in this appeal.

Appellant's supplementary submissions in reply

[120] Ms. Engmann replies that the Union appears to take inconsistent positions regarding what is and is not provided in the Contingency Plan. Nonetheless, the Union seems to agree that the situation of inmate disturbance in the yard and staff deployment in response thereto is covered in the Contingency Plan. The point of contention appears to be in the level of detail provided in the Contingency Plan.

[121] She contends that the union appears disingenuous to state that the Employer "ought to devise a proper emergency procedure in conjunction with the IERT", when in fact the IERT has persistently refused to develop such a procedure. This procedure, which must be approved and signed by the crisis management team, allows for the IERT and crisis management team to prepare a step by step and detailed plan to resolve the situation, including the identification of the authorized options of force and necessary equipment.

[122] Regarding question two, Ms. Engmann notes that, as written in the Joint Agreed Statement of facts, Correctional Services has developed a National Hazard Prevention Plan (NHPP), which incorporates a methodology for the identification and assessment of hazards in the work place. The generic Critical Tasks Analysis (CTA) and Job Hazard Analysis (JHA) for the Correctional Officer position are currently being adapted to the local conditions at Millhaven Institution. It is clear from the provided documents that the Union has been consulted via its participation on the National Policy Committee in the development and implementation of the employer's NHPP.

[123] Regarding question three, Ms. Engmann concurs with the Union that the provision of the regulation on Violence Prevention would not be applicable given the very nature of the work place and the job requirements of a Correctional Officer.

[124] Finally, Ms. Engmann concludes that the evidence supports the conclusion that the HSO's direction and findings cannot be sustained and ought to be rescinded. She further states that the employer has clearly demonstrated that Correctional Officers have received the training and tools necessary to enter and clear the yard in order to extract an

inmate in need of medical assistance. She maintains that the evidence supports the conclusion that the employer is in compliance with its obligations under the Code with respect to the development and implementation of a hazard prevention program. She asserts that while the NHPP has yet to be adapted to Millhaven Institution, it is evident that the hazard that led to the HSOs investigation has already been identified and assessed.

Analysis

[125] My role is to determine whether HSO Garron erred in finding that the employer, Correctional Services of Canada, contravened paragraph 125(1)(p) of the Code and paragraph 17.5(1)(a) of the Regulations.

[126] The provision of the Code referenced by HSO Garron reads as follows:

> 125(1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,
>
> > (p) ensure, in the prescribed manner, that employees have safe entry to, exit from and occupancy of the work place;

[127] The HSO also referred to the following Regulations in his direction:

> 17.5(1) Every employer shall, after consultation with the work place committee or the health and safety representative and with the employers of any persons working in the building to whom the Act does not apply, prepare emergency procedures
>
> > (a) to be implemented if any person commits or threatens to commit an act that is likely to be hazardous to the health and safety of the employer or any of his or her employees;

[128] The HSO used the above noted references to the Code and Regulations to require the employer to correct the following identified hazard:

> Correctional Officers have not received the training and necessary resources to enter the yard under emergency situations to clear the yard and extract an inmate in need of medical assistance.

[129] In light of the above, I have to determine whether Correctional Officers who have to enter the yard as part of the Institutional Emergency Response Team (IERT), and face an angry, assaultive group of inmates have been properly trained and equipped to enter the yard safely, and extract an injured inmate.

[130] As stated earlier in this decision, further to the hearing I requested additional submissions from the parties. The parties have responded, as indicated above.

Consequently, in addition to the evidence presented by both parties at the hearing, in determining the issues raised by this appeal, I will consider the information and arguments that were presented in the supplemental submissions provided.

Question No. 1:

> Do the provisions cited by HSO Garron, that is paragraph 125(1)(p) of the Code and paragraph 17.5(1)(a) of the Regulations, apply to the factual circumstances investigated by the HSO?
>
> In other words, do these sections of the Code and Regulations, which deal with safe entry to, exit from and safe occupancy of the workplace, apply to a situation dealing with a work procedure where COs have to enter and clear the exercise yard and perhaps extract an injured inmate? Or, are those sections meant to apply to different factual circumstances? [My underline]

[131] In my opinion, one cannot base the interpretation of a regulation on one or two subsections only, it has to be read as a whole, within its full statutory context, in order to determine its full and most appropriate meaning. In reading Part XVII of the Regulations, entitled "Safe Occupancy of the Work Place", I find that it concerns fire protection equipment, pursuant to section 17.3, activating fire alarm, notifying fire department and assisting employees who require special assistance, pursuant to paragraph 17.4(2)(c).

[132] I note that the emergency procedure at section 17.5 describes various situations where the procedure ought to be implemented, such as when there are threats to commit an act likely to be hazardous to the health and safety of the employees. This could be taken into consideration in this case. Furthermore, this section identifies other situations such as spills of hazardous products, failure of lighting, or the occurrence of a fire.

[133] Subsection 17.5(1) also states that the emergency procedure must include the emergency evacuation plan, description of procedure to be followed, as well as the location of emergency equipment provided by the employer. Additionally, the subsection that follows it addresses training on procedure to be implemented and the location, use and operation of fire protection equipment and emergency equipment provided by the employer.

[134] The regulation goes on to address the role of emergency wardens, inspections of fire escapes, exits stairways and fire protection equipment. The section that follows also addresses emergency drills, and notification of such drill to the local fire department.

[135] Finally, the Regulation addresses "Fire Hazard Areas" which have to be identified and posted to prohibit the use of open flames or other sources of ignition in that area.

[136] In my opinion, read together, paragraph 125(1)(p) of the Code, along with paragraph 17.5(1)(a) of the Regulation, are most relevant to emergency entrance and exit

of a workplace where there is risk of a fire, an explosion (or threats thereof), a mechanical failure of some sort, or even exposure to hazardous chemicals, for example.

[137] I agree that inmates could be seen as people threatening Correctional Officers, daring to, for example, set or actually setting the place on fire, and that there is a need to have emergency procedures in place to deal with these situations if they were to arise. I believe that paragraph 17.5(1)(a) of the Regulations would apply to these very specific situations.

[138] However, in the case at hand, the inmates did not threaten or commit any act that could be properly considered to create an "emergency" in the way that the concept appears to be contemplated in paragraph 17.5(1)(a). I do recognize that there is always a possibility of such things occurring, however, especially the creation or threat of a fire emergency, for example. In the present case, though, the chances of an emergency erupting were not higher than the usual risk of such a thing taking place at the institution at any time. In fact, there was lighting in the building and the employer was in full control of the inmates, except for those inmates who remained in the exercise yard and refused to go back to their cells inside the institution.

[139] Consequently, I find that that while there is always a possibility of inmates threatening Correctional Officers, and/or creating an emergency situation, the issues to be resolved in the present appeal are not sufficiently dealt with by Part XVII of the Regulations.

[140] The circumstances of this case, as the evidence demonstrates, concerns the "training of Officers and necessary resources to enter the yard under emergency situations to clear the yard and extract an inmate in need of medical assistance." This is a much more complex scenario which, in my mind, requires more and otherwise than what is stipulated in Part XVII.

[141] In my view, this appeal concerns a situation where the employees, Correctional Officers, have to regain control of belligerent inmates in cells, or on the range or as in this case, the exercise yard, in a safe and controlled fashion for the inmates and the employees. The evidence has revealed that it is not uncommon at the Millhaven institution for inmates to refuse to return to their cells from the yard.

[142] Therefore, I do not believe the present circumstances to be indicative of an emergency situation that necessitates the evacuation of the work place as contemplated by s. 17.5(1)(a) of the Regulations. As stated by both parties, "in a correctional environment, dealing with inmate violence is part and parcel of the job." Consequently, I see this as a situation that concerns work procedures where there is a need to regain control of aggressive inmates, not the emergency evacuation of a work place.

[143] In sum then, I find that subsection 17.5(1)(a) does not apply to the circumstances of this case and thereby find that the HSO erred in finding that the employer had contravened this provision of the Regulations.

Question No. 2:

Are paragraph(s) 125(1)(z.03) and/or (z.04) of the Code and the prescribed regulation, Part XIX of the Regulations (Hazard Prevention in the Work Place), applicable to the circumstances surrounding this case? If so, do the facts established at the hearing raise a contravention of these provisions?

[144] The above mentioned provisions of the Code and the Regulations read as follows:

***Canada Labour Code,* Part II**

125(1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

(z.03) develop, implement and monitor, in consultation with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative, a prescribed program for the prevention of hazards in the work place appropriate to its size and the nature of the hazards in it that also provides for the education of employees in health and safety matters;

(z.04) where the program referred to in paragraph (z.03) does not cover certain hazards unique to a work place, develop, implement and monitor, in consultation with the work place committee or the health and safety representative, a prescribed program for the prevention of those hazards that also provides for the education of employees in health and safety matters related to those hazards;

***Canadian Occupational Health and Safety Regulations,* Part XIX**

Hazard Prevention Program

19.1(1) The employer shall, in consultation with and with the participation of the policy committee, or, if there is no policy committee, the work place committee or the health and safety representative, develop, implement and monitor a program for the prevention of hazards, including ergonomics-related hazards, in the work place that is appropriate to the size of the work place and the nature of the hazards and that includes the following components:

(a) an implementation plan;
(b) a hazard identification and assessment methodology;
(c) hazard identification and assessment;
(d) preventive measures;
(e) employee education; and
(f) a program evaluation.

[145] The evidence is that CSC has developed such a prevention program as of 2008 in accordance with paragraph 125(1)(z.03). In the documentation[3] provided by CSC, I found that the methodology retained by CSC to identify the hazards was a JHA. A generic JHA was eventually done on a national basis in consultation with the National Joint Occupational Health and Safety (NJOHS) Policy Committee. This generic JHA was to be finally fine-tuned by each CSC work place to include hazards which were specific to the individual work places, as required under paragraph 125(1)(z.04) of the Code. However, the evidence is that this fine-tuning has not occurred at Millhaven Institution.

[146] In going through the generic JHA, I find that it appropriately identifies a range of potential hazards that can arise at correctional facilities. Even though the respondent complained that the Hazard Prevention Program (HPP) was incomplete, my careful assessment of the program has not left me to determine that it is insufficient.

[147] In reading the "Correctional Training Program – at a Glance" that was provided by CSC, it appears to me that training occurs for all of the control measures identified in the JHA. Additionally, the evidence indicates that the Institutional Emergency Response Team (IERT) members have personal protective equipment, such as body armor, and have access to a full array of other equipment including, irritant chemicals, pepper sprays, batons, shields, even fire arms, as required.

[148] The Code requires, under paragraph 125(1)(z.04), that in the event where the program referred to under paragraph 125(1)(z.03) does not cover certain hazards unique to a work place, the development, implementation and monitoring must be done in consultation with the local work place committee, which will also provide for the education of employees in health and safety matters related to those hazards.

[149] It is clear from the evidence that the IERT members lack something to conduct control and extraction from the particular yard in question. They view the configuration of Milhaven's yard as a major obstacle and a hazard in conducting this operation. They fear that their experience and training is insufficient to prepare and conduct a safe operation. I am in agreement with their determinations. I am of the opinion that based on the totality of the evidence with which I have been presented, this matter would be properly resolved by not only conducting a JHA that takes into account the particular configuration of the yard at Milhaven Institution, but also the development and implementation of a hazard prevention program that specifically deals with the hazard(s) encountered within the context of this configuration. I am of the opinion that the issue would also be resolved if the above was done in consultation with the local health and safety committee.

[150] I am of the opinion that it is the duty of the local Committee to participate in such an endeavor, pursuant to paragraph 135(7)(c) of the Code. According to paragraph 135(7)(e), the Committee can also consult, as required, with persons who are *professionally or technically* qualified to advise them. I further note that under paragraph

[3] Hazard Prevention Program at Correctional Services.

125(1)(z.08) of the Code, the employer has to cooperate with the Policy, Local/Representative committee in the execution of their duties under the Code.

[151] In light of the above, although the parties relied heavily on the SMEAC to make their case, I find that this document is as properly identified as an Action Plan. It is not a document that analyzes the potential hazards and determines corrective measures and/or training. Rather, it uses information, such as the circumstances of the event that requires IERT intervention, and based on the gathered information, determines, for example, what procedure will be utilized, what equipment will be required. I believe that if the JHA was properly done at the specific work place and in consultation with the local health and safety Committee, the results could certainly guide the IERT in their choice of procedure and equipment to be used during the intervention. I note again, as stated in Ms. Engelmann's submission, that the JHA has still not been adapted to the reality of the Millhaven Institution.

[152] As an additional note, I feel that it is important to address the fact that both parties devoted much attention to the question of the adequacy of Milhaven's Contingency Plan and whether it could be reliably followed to protect the safety of Correctional Officers in the event of an emergency. I find that the arguments and evidence submitted by both parties on this question were made in direct response to HSO Garron's determination that the appellant employer was in contravention of Part XVII of the Regulations. Since I have come to the conclusion that Part XVII does not apply to the circumstances of this appeal, the procedures outlined in the Contingency Plan have not been factored into my determination of the issues under appeal.

[153] Based on the above, I believe that paragraphs 125(1)(z.03) and (z.04) of the Code, along with sections 19.4, 19.5, 19.6 and 19.7 of Part XIX of the *Canada Occupational Health and Safety Regulations* are the provisions that properly apply to the particular circumstances of this matter, and that Correctional Services Canada is in violation of these provisions.

Question No. 3:

> Are paragraph 125(1)(z.16) of the Code and Part XX of the Regulations (Violence Prevention in the Work Place) applicable to the circumstances of this case? If so, do the record and evidence presented to me indicate the existence of a contravention of these provisions?

[154] The above noted provisions read as follows:

> ***Canada Labour Code***
>
> 125(1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

> (z.16) take the prescribed steps to prevent and protect against violence in the work place;
>
> ***Canada Occupational Health and Safety Regulations***
>
> PART XX
> VIOLENCE PREVENTION IN THE WORK PLACE
>
> Interpretation
>
> 20.1 The employer shall carry out its obligations under this Part in consultation with and the participation of the policy committee or, if there is no policy committee, the work place committee or the health and safety representative.
>
> 20.2 In this Part, "work place violence" constitutes any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee.

[155] With regard to this third question that I put forth to the parties, both are in agreement that these provisions do not apply to the factual circumstances of this case. I concur with them that the situation at hand is quite different than what is envisaged in this particular regulation.

Conclusion

[156] The issue that the HSO was attempting to correct was described as follow in his direction:

> Correctional Officers have not received the training and necessary resources to enter the yard under emergency situations to clear the yard and extract an inmate in need of medical assistance.

[157] Based on the above, I am of the opinion that the Health and Safety Officer erred by making reference to an incorrect provision of the Code in his direction. As stated above, I believe that HSO Garron should have used paragraphs 125(1)(z.03) and (z.04) of the Code, as well as sections 19.4, 19.5, 19.6 and 19.7 of Part XIX of the Regulations, taking into consideration those unique identified hazards, and developing as well preventative measures against those unique hazards as well as employee education and/or training.

[158] As a consequence, I am rescinding the direction issued on April 9, 2010 to Correctional Services Canada and replacing it with my own. The purpose of replacing the original direction is to reflect my finding that it is sections 19.4, 19.5, 19.6 and 19.7 of Part XIX of the Regulations that apply in these circumstances as opposed to Part XVII, which the HSO originally cited. In sum then, after assessing this issues before me, I am of the position that Correctional Service Canada is in contravention of the aforementioned

sections of Part XIX and not Part XVII of the *Canada Occupational Health and Safety Regulations*.

[159] The employer, Correctional Services Canada has 30 days from reception of my decision to develop, implement and monitor, in consultation with the work place committee, a prescribed program for the prevention of those hazards, that also provides for the education of employees on health and safety matters related to those hazards. The direction is attached in Appendix of this decision.

Decision

[160] I have decided to rescind and replace the direction issued by HSO Garron to Correctional Services Canada because I have found that the HSO erred in issuing the direction on the basis of a violation of Part XVII of the *Canada Occupational Health and Safety Regulations*. Instead, I have found that the employer, Correctional Services Canada is in violation of sections 19.4, 19.5, 19.6 and 19.7 of in Part XIX of the *Canada Occupational Health and Safety Regulations* and have issued a new direction to accord with this finding.

Richard Lafrance
Appeals Officer

Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

APPENDIX

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II – OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

Further to an inquiry conducted by the undersigned Appeals Officer, between February 28, 2011 and March 3, 2011, pursuant to section 146.1 of the *Canada Labour Code*, Part II, into the circumstances of a direction issued by Health and Safety Officer Greg Garron on April 9, 2010 to Correctional Services Canada, being an employer subject to the *Canada Labour Code*, Part II:

The undersigned Appeals Officer is of the opinion that Correctional Services Canada is in contravention of the following provisions of the *Canada Labour Code*, Part II and the *Canada Occupational Health and Safety Regulations*:

1. *Canada Labour Code,* Part II, paragraph 125.1(z.04);

2. *Canada Occupational Health and Safety Regulations*, Part XIX, sections 19.4, 19.5, 19.6 and 19.7.

Correctional Officers have not received sufficient training and the necessary resources to safely enter the recreational yard at Millhaven Institution to clear this area and extract an inmate in need of medical assistance.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the *Canada Labour Code*, Part II, to take measures within 30 days of reception of this decision to terminate the contravention and to ensure that the contravention does not continue or reoccur and to report on those measures to a Health and Safety Officer at the Toronto District Office of Human Resources and Skills Development Canada, Labour Program by March 22, 2013

Direction issued at Ottawa, February 20, 2013.

Richard Lafrance
Appeals Officer

To: Correctional Services Canada
Warden
Millhaven Institution